



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1997

The Honorable Steven C. Hilbig
Bexar County Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

Letter Opinion No. 97-069

Re: Whether a constable may call regular and reserve deputy constables into service to provide security at events sponsored by separate governmental or private entities and collect payment therefor (ID# 39175)

Dear Mr. Hilbig:

You ask whether a constable may call regular and reserve deputy constables into service to provide security at events sponsored by separate governmental or private entities. You state that a Bexar County constable is providing regular and reserve deputy constables as security personnel to separate governmental and private entities and collecting monies on behalf of a deputy constables' association for the deputy constables' services.

The situation you describe is addressed by existing authority. First, we note that a constable is clearly authorized to deploy regular and reserve deputy constables to preserve the peace within his or her jurisdiction at events sponsored by governmental or private entities. *See* Code Crim. Proc. art. 2.13 (duty of peace officer to preserve the peace within his or her jurisdiction); Local Gov't Code § 86.012(b) (authority of constable to call reserve constables to preserve the peace and enforce the law). It is also a well-established common-law principle, however, that peace officers acting within the scope of their official duties may not receive compensation from third parties. *See, e.g.,* Attorney General Opinions JM-462 (1986) at 4 ("it is well-established that peace officers may not accept compensation from third parties or private sources for the performance of their official duties"), JM-57 (1983) at 5 (noting "basic rule of law that a public officer may not accept compensation from third parties or private sources for the performance of official duties") (citing *Kasling v. Morris*, 9 S.W. 739, 740 (Tex. 1888)), C-661 (1966) at 3. Therefore, a regular or reserve deputy constable who provides security for an event sponsored by a separate governmental or private entity within the scope of his or her official duties may not accept compensation from the event's sponsor for doing so. We believe that this common-law prohibition precludes a regular or reserve deputy constable from performing official duties in exchange for any type of consideration beyond his or her regular salary, including a contribution to a deputy constables' association. We also believe it precludes a constable from deploying regular or reserve deputy constables to perform official duties in exchange for any type of additional consideration.

The authority of a regular, full-time peace officer to provide security services while off-duty is limited by the Texas Board of Private Investigators and Private Security Agencies Act, V.T.C.S. art. 4413(29bb) (the "act"). A regular, full-time peace officer who provides security services while off-duty when directly employed by the security recipient as an independent contractor or as an employee is excepted from the requirements of the act. See V.T.C.S. art. 4413(29bb), § 3(a)(3); Attorney General Opinion DM-287 (1994). A peace officer who is employed by an intermediary who contracts with security recipients to provide security personnel is subject to the act's requirements, as is the intermediary. Attorney General Opinion DM-287 at 2. The legislative history of the act recited in Attorney General Opinion DM-287 suggests that the act does not apply if a constable merely informs regular, full-time deputy constables of opportunities for off-duty security employment with another governmental or private entity, but that the constable may not do so pursuant to a contractual arrangement with the deputy constables or the third-party entity or do so for any type of consideration. *Id.* at 2-3.

The exception in the act for regular, full-time peace officers does not apply to reserve peace officers. V.T.C.S. art. 4413(29bb), § 3(a)(3)(C); Letter Opinion No. 93-115 (1993). Therefore, except in certain limited circumstances, a reserve deputy constable who provides security services to a separate governmental or private entity must comply with the act's requirements.¹ Furthermore, in Attorney General Opinion DM-333 (1995), we addressed whether a sheriff is authorized to call reserve deputy sheriffs into service for the purpose of providing security for a separate governmental or private entity that will pay the deputies on an employee or independent contractor basis. We concluded that a sheriff is not authorized to do so because Local Government Code section 85.004(b) authorizes a sheriff to call reserve deputy sheriffs into service only "to preserve the peace and enforce the law," *i.e.*, to perform official duties. The language of the statute controlling the authority of a constable to call a reserve deputy constable into service, Local Government Code section 86.012(b), is practically identical to the language of the statute controlling the authority of a sheriff to call a reserve deputy sheriff into service. Therefore, we believe that the reasoning and conclusion of Attorney General Opinion DM-333 apply with equal force here, and conclude that a constable is not authorized to call a reserve deputy constable into service for the purpose of providing security for a separate governmental or private entity unless the deputy constable does so to preserve the peace and enforce the law within the scope of his or her official duties.

In summary, a regular or reserve deputy constable may not perform official duties in exchange for any type of additional consideration from another governmental or private entity, including a contribution to a deputy constables' association, nor may a constable deploy regular or reserve deputy constables to perform official duties in exchange for any type of additional consideration. A constable may merely inform regular, full-time deputy constables of opportunities for off-duty security employment, but both the constable and the deputy constables will be subject to the act if the constable does so pursuant to a contractual agreement or does so for any type of

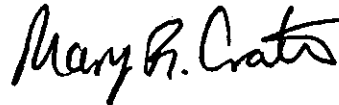
¹But see V.T.C.S. art. 4413(29bb), § 3(a)(16) (exception for reserve peace officer performing certain duties for a county). Other exceptions in section 3 may apply in certain circumstances. A person's reserve peace officer status is irrelevant to those exceptions.

consideration. A constable is not authorized to call a reserve deputy constable into service for the purpose of providing security for a separate governmental or private entity unless the deputy constable does so to preserve the peace and enforce the law within the scope of his or her official duties.

S U M M A R Y

A regular or reserve deputy constable may not perform official duties in exchange for any type of additional consideration from another governmental or private entity, including a contribution to a deputy constables' association, nor may a constable deploy regular or reserve deputy constables to perform official duties in exchange for any type of additional consideration. A constable may merely inform regular, full-time deputy constables of opportunities for off-duty security employment, but both the constable and the deputy constables will be subject to the Texas Board of Private Investigators and Private Security Agencies Act, V.T.C.S. art. 4413(29bb), if the constable does so pursuant to a contractual agreement or does so for any type of consideration. A constable is not authorized to call a reserve deputy constable into service for the purpose of providing security for a separate governmental or private entity unless the deputy constable does so to preserve the peace and enforce the law within the scope of his or her official duties.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee